



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2021-0254; FRL-9347-01-OCSPP]

Asbestos Part 2: Supplemental Evaluation Including Legacy Uses and Associated Disposals of Asbestos; Draft Scope of the Risk Evaluation to be Conducted under the Toxic Substances Control Act; Notice of Availability and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with implementing regulations for the Toxic Substances Control Act (TSCA), the Environmental Protection Agency (EPA) is announcing the availability of and soliciting public comment on the draft scope of the Risk Evaluation for Asbestos Part 2: Supplemental Evaluation Including Legacy Uses and Associated Disposals of Asbestos.

In the Part 2 risk evaluation for asbestos, EPA will evaluate the conditions of use of asbestos (including other types of asbestos fibers in addition to chrysotile) that EPA had excluded from Part 1 as legacy uses and associated disposals, as well as any conditions of use of asbestos in talc and talc-containing products. The draft scope for this chemical substance includes the conditions of use, hazards, exposures, and the potentially exposed or susceptible subpopulations that EPA plans to consider in conducting the risk evaluation for this chemical substance. EPA is also opening a 45-calendar day comment period on the draft scope to allow for the public to provide additional data or information that could be useful to the Agency in finalizing the scope of the risk evaluation; comments may be submitted to this docket.

DATES: Comments must be received on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2021-0254, through the Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any

information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets/about-epa-dockets>.

Due to the public health concerns related to COVID-19, the EPA Docket Center (EPA/DC) and Reading Room is open to visitors by appointment only. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Peter Gimlin, Existing Chemical Risk Management Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency (Mailcode 7404T), 1200 Pennsylvania Ave., NW, Washington, DC 20460-0001; telephone number: (202) 566-0515; email address: gimlin.peter@epa.gov.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to entities that manufacture (including import) a chemical substance regulated under TSCA, 15 U.S.C. 2601 *et seq.*, (e.g., entities identified under North American Industrial Classification System (NAICS) codes 325 and 324110). The action may also be of interest to chemical processors, distributors in commerce, and users; non-governmental organizations in the environmental and public health sectors; state and local government agencies; and members of the public. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities and

corresponding NAICS codes for entities that may be interested in or affected by this action.

B. What is the Agency's authority for taking this action?

The draft scope of the risk evaluation is issued pursuant to TSCA section 6(b) and TSCA implementing regulations at 40 CFR 702.41(c)(7).

C. What action is the Agency taking?

EPA is publishing and requesting public comment on the draft scope of the Risk Evaluation under TSCA for Asbestos Part 2: Supplemental Evaluation Including Legacy Uses and Associated Disposals of Asbestos. Through the risk evaluation process, EPA will determine whether the chemical substance presents an unreasonable risk of injury to health or the environment under the conditions of use, as determined by the Administrator, in accordance with TSCA section 6(b)(4).

II. Background

Following EPA's June 2016 designation of Asbestos as one of the first ten chemicals to undergo risk evaluation under TSCA, EPA initially focused the risk evaluation for asbestos on chrysotile asbestos as this is the only asbestos fiber type that is currently imported, processed, or distributed in the U.S. However, in late 2019, the court in *Safer Chemicals, Healthy Families v. EPA*, 943 F.3d 397 (9th Cir. 2019) held that EPA's Risk Evaluation Rule (82 FR 33726, July 20, 2017) (FRL-9964-38) and codified at 40 CFR part 702, subpart B, should not have excluded "legacy uses" (i.e., uses without ongoing or prospective manufacturing, processing, or distribution) or "associated disposals" (i.e., future disposal of legacy uses) from the definition of conditions of use, although the court did uphold EPA's exclusion of "legacy disposals" (i.e., past disposal). Following this court ruling, EPA continued development of the risk evaluation focused on chrysotile asbestos and determined that the complete risk evaluation for asbestos would be issued in two parts. The Risk Evaluation for Asbestos Part 1: Chrysotile Asbestos was released in December 2020 (86 FR 89, January 4, 2021) (FRL-10017-47), allowing the Agency to expeditiously move into risk management for the unreasonable risk identified in Part 1. Under

the consent decree in the case *Asbestos Disease Awareness Organization et al v. Regan et al*, 4:21-cv-03716 (N.D. Cal.) EPA is required to publish a final Part 2 Risk Evaluation for Asbestos on or before December 1, 2024. The draft scope of the Risk Evaluation for Asbestos Part 2 is the subject of this notice.

The purpose of a risk evaluation is to determine whether a chemical substance, or group of chemical substances, presents an unreasonable risk to health or the environment, under the conditions of use, including an unreasonable risk to a relevant potentially exposed or susceptible subpopulation (15 U.S.C. 2605(b)(4)(A)). As part of this process, EPA must evaluate both hazards and exposures for the conditions of use; describe whether aggregate or sentinel exposures were considered and the basis for consideration; not consider costs or other non-risk factors; take into account where relevant, likely duration, intensity, frequency, and number of exposures; and describe the weight-of-scientific-evidence for hazards and exposures (15 U.S.C. 2605(b)(4)(F)). This process will culminate in a determination of whether or not the chemical substance presents an unreasonable risk of injury to health or the environment under the conditions of use (15 U.S.C. 2605(b)(4)(A); 40 CFR 702.47).

III. Draft Scope of the Risk Evaluation for Asbestos Part 2: Supplemental Evaluation Including Legacy Uses and Associated Disposals of Asbestos

EPA is publishing the draft scope of the Risk Evaluation for Asbestos Part 2: Supplemental Evaluation Including Legacy Uses and Associated Disposals of Asbestos. For the purposes of scoping and risk evaluation, EPA has adopted the definition of asbestos as defined by TSCA Title II (added to TSCA in 1986), Section 202 as the “asbestiform varieties of six fiber types – chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite or actinolite.” The latter five fiber types are amphibole varieties. Given that Part 2 of the risk evaluation will focus on legacy uses of asbestos and associated disposals, a unique consideration will be vermiculite, which was widely used in building materials in the past and was co-located with Libby Amphibole Asbestos (LAA; and its tremolite, winchite, and

richterite constituents). Thus, LAA (and its tremolite, winchite, and richterite constituents) will be considered in Part 2 of the risk evaluation. Additionally, another commercially mined substance, talc, has been implicated as a potential source of asbestos exposure. Talc can also be co-located geologically with asbestos, where asbestos can remain in small or trace amounts following extraction. Thus, EPA will determine the relevant conditions of use of talc, including but not limited to any “legacy use” and “associated disposal”, where asbestos is implicated. The draft scope of the risk evaluation for this asbestos Part 2 includes the conditions of use, hazards, exposures, and the potentially exposed or susceptible subpopulations EPA plans to consider in the risk evaluation (15 U.S.C. 2605(b)(4)(D)). Development of the scope is the first step of a risk evaluation. The draft scope of the risk evaluation will include the following components (40 CFR 702.41(c)):

- The conditions of use, as determined by the Administrator, that EPA plans to consider in the risk evaluation.

- The potentially exposed populations that EPA plans to evaluate; the ecological receptors that EPA plans to evaluate; and the hazards to health and the environment that EPA plans to evaluate.

- A description of the reasonably available information and the science approaches that the Agency plans to use.

- A conceptual model that will describe the actual or predicted relationships between the chemical substance, the conditions of use within the scope of the evaluation and the receptors, either human or environmental, with consideration of the life cycle of the chemical substance—from manufacturing, processing, distribution in commerce, storage, use, to release or disposal—and identification of human and ecological health hazards EPA plans to evaluate for the exposure scenarios EPA plans to evaluate.

- An analysis plan, which will identify the approaches and methods EPA plans to use to assess exposure, hazards, and risk, including associated uncertainty and variability, as well as a

strategy for using reasonably available information and science approaches.

- A plan for peer review.

EPA encourages commenters to provide information they believe might be missing or may further inform the risk evaluation.

Authority: 15 U.S.C. 2601 *et seq.*

Michael S. Regan,

Administrator.

[FR Doc. 2021-28230 Filed: 12/28/2021 8:45 am; Publication Date: 12/29/2021]